NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Starbucks Corporation d/b/a Starbucks Coffee Company *and* Local 660, Industrial Workers of the World. Cases 2–CA–37548, 2–CA–37599, 2–CA–37606, 2–CA–37688, 2–CA–37689, 2–CA–37798, 2–CA–37821, and 2–CA–38187

August 26, 2010

## DECISION AND ORDER

## BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND HAYES

On October 30, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 99. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the Board issued an order setting aside the above-referenced Decision and Order, and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup>

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 354 NLRB No. 99, which has been set aside and which is incorporated by reference.<sup>3</sup>

Dated, Washington, D.C. August 26, 2010

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member
Brian E. Hayes,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

<sup>&</sup>lt;sup>2</sup> Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

<sup>&</sup>lt;sup>3</sup> In finding the Respondent's discharge of Joseph J. Agins Jr. violated the Act, Member Hayes joins Member Schaumber in adopting the judge's analysis under *Atlantic Steel*, 245 NLRB 814 (1979), and therefore does not reach her analysis under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). See 354 NLRB No. 99, slip op. at 1–2 fn. 5. Additionally, although he finds that the Respondent unlawfully discharged Daniel Gross under the facts here, Member Hayes agrees with Member Schaumber that the Act does not give employees license to tell their coworkers which of their duties to perform. Id.